

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES BROOKS,

Plaintiff,

v.

FIESTA FOODS,

Defendant.

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Civil Action No. **3:18-CV-3241-L**

ORDER

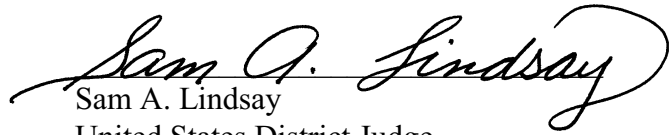
On May 13, 2019, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) were entered (Doc. 11), recommending that the court dismiss without prejudice this action by pro se Plaintiff James Brooks (“Plaintiff”) under Federal Rule of Civil Procedure 41(b) for failure to prosecute or comply with a court order. No objections to the Report were filed. On May 24, 2019, Plaintiff filed a response to the magistrate judge’s questionnaire, albeit approximately five months after the deadline to do so. Plaintiff, however, still has not paid the filing fee as directed by the magistrate judge despite being given an extension to June 14, 2019 (Doc. 13).

Accordingly, having reviewed the pleadings, file, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, **accepts** them as those of the court, and **dismisses without prejudice** this action under Rule 41(b) for failure to prosecute and comply with a court order.

The court prospectively **certifies** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3). In support of this certification, the court **incorporates** by reference the Report. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). The court **concludes** that any appeal of this action would present no legal point of arguable

merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the clerk of the United States Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; Fed. R. App. P. 24(a)(5).

It is so ordered this 1st day of July, 2019.


Sam A. Lindsay
United States District Judge